

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

LAFRECIA TERENCE BATTIS

PLAINTIFF

V.

CIVIL ACTION NO 1:03CV 209-JAD

DR. LUIS PERIA

DEFENDANT

REPORT AND RECOMMENDATION

The undersigned recommends that Defendant's Motion to Dismiss be granted pursuant to Rule 41(b) Federal Rules of Civil Procedure. The plaintiff has been proceeding *pro se* since the withdrawal of her counsel on June 14, 2005. She was granted sixty days in which to obtain alternate counsel, but did not do so. The court on October entered its initial Rule 16.1 order setting the matter for telephonic conference on January 5, 2006. When advised by counsel for the defendant that he was unable to obtain any cooperation from the plaintiff as required by the court's order, this court then entered its order expressly directing the plaintiff to fully and promptly comply with the Rule 16.1 order or risk dismissal. The plaintiff failed to contact the court or counsel for the defendant at the time of the scheduled Case Management Conference and is advised that she has not cooperated with counsel for the defendant, contacted counsel or responded to his attempts to contact her. For these reasons the undersigned recommends that this action be dismissed without prejudice for failure to prosecute. This case was assigned originally to the undersigned pursuant to the draw. However, no consent has ever been entered by the parties. Accordingly, this report and recommendation has been forwarded to Chief Judge Glen H. Davidson.

The parties are referred to 28 U.S.C. 636(b)(1) and Local Rule 72.2(D) for the appropriate procedure in the event any party desires to file objections to these findings and recommendations.

Objections are required to be in writing and must be filed within ten days of this date. Failure to file written objections to the proposed finding and recommendations contained in this report within ten days from the date of filing will bar an aggrieved party from challenging on appeal both the proposed factual findings and the proposed legal conclusions accepted by the district court *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996).

Plaintiff is directed to acknowledge receipt of this report and recommendation by signing the enclosed acknowledgment form and returning it to the court within ten days of this date. Petitioner is warned that failure to comply with the requirements of this paragraph may lead to the dismissal of this lawsuit under F.R.Civ.P. 41(b) for failure to prosecute and for failure to comply with an order of the court.

This the 6th day of January, 2006.

/s/ JERRY A. DAVIS
UNITED STATES MAGISTRATE JUDGE